

and of the audit provided for herein, or if either party has requested a recalculation it shall be paid promptly after the matter is resolved.

A deficiency, if any, in the Capital Reimbursement Fund to pay DELCORA's share of the actual "total project costs" shall be paid by DELCORA within one hundred and twenty (120) days of notice to pay, accompanied by the audit referred to above, or if either party has requested a recalculation, it shall be paid promptly when the matter is resolved.

After such actions any balance in the fund will be returned to DELCORA.

#### ARTICLE 5

##### Governmental Grants And Subsidies, Permits

##### 5.01 Applications

The City will make proper and timely applications to the Commonwealth of Pennsylvania and to the United States of America and their appropriate agencies, for all available grants, subsidies or other payments and for all permits and approvals in the respect of the planning, design, acquisition, construction, operation and maintenance of the expansion of Southwest Plant, and DELCORA will cooperate therein.

##### 5.02 City as Agent

Where permitted by law, DELCORA hereby appoints the City as its agent to apply, in its name or otherwise, to the Commonwealth of Pennsylvania and to the United States of America and their appropriate agencies and to receive the proportionate share of DELCORA of all available grants, subsidies or other payments in respect of the construction, acquisition, operation and

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maintenance of the Southwest Plant.

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5.03 Application of Grant Proceeds

The City will apply the Capital grants, subsidies or other payments received by it in respect of the expansion of the Southwest Plant in reduction of "total project costs," and will apply operating grants, subsidies or other payments to the reduction of operating costs.

5.04 Compliance With Conditions for Grants

Each party hereto will take all such action, within its legal powers, as may be required to comply with all applicable laws, guidelines, and regulations relating to Federal and State grants and subsidies, to the end that such grants and subsidies may be obtained for the Southwest Plant in maximum amounts, and each party will use its best efforts to obtain similar compliance from others.

ARTICLE 6

Operating Service Charges  
and Payments

6.01 The Service Charge and Management Fee

DELCORA shall pay quarterly to the City a service charge for the treatment and disposal of its wastewater delivered to the Southwest Plant.

This service charge will be based on DELCORA's proportionate share of operating costs at the Southwest Plant in terms of proportionate shares of the gallons of wastewater flow treated and disposed of and of the pounds of BOD and of the suspended solids in that flow.

This service charge shall be calculated on past and estimated future operating experience and shall be fixed in rates applicable to gallons of

wastewater flow delivered, pounds of BOD delivered, and pounds of suspended solids delivered.

Such rates shall be reviewed from time to time, but not less often than five years, with a view of their revision on the same time basis as the service charges to regular customers in Philadelphia are reviewed.

The City shall inform DELCORA of any change in rates accompanied by supporting material in reasonable detail at least ninety days in advance of their becoming effective.

The City shall complete the billing by adding to the service charge a management fee equal to 10% of the service charge.

#### 6.02 Operating Costs Defined

Operating costs used in computation of the rates shall include all of the costs and expenses of the operation, maintenance, repairs, replacements and renewals of the Southwest Plant and its equipment and facilities including for the Southwest Plant:

- (1) salaries and wages of the administrative, supervisory, operating and maintenance personnel at the Southwest Plant, together with their fringe benefits, including but not limited to pensions, social security taxes, life insurance, medical and hospital insurance and workmen's compensation;
- (2) materials, supplies and equipment;
- (3) maintenance, repairs, replacements and renewals;
- (4) debt service for replacements and renewals funded from bond proceeds;



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- (5) premiums for insurance, if any, and
- (6) all other costs and expenses, including overhead, incurred and allocable under sound accounting principles consistently applied to the operation, maintenance, repairs, replacements and renewals of Southwest Plant.

6.03 Costs of Maintaining and Repairing Conveyance System Within the City

In addition, when the City maintains and repairs that part of the Conveyance System located within the boundaries of the City, it shall bill DELCORA for the costs of such maintenance and repairs allocable on the same basis as the items covered in operating costs.

6.04 Operating Payments

Billings to be made to DELCORA for wastewater treated and disposed of shall commence with DELCORA's delivery of wastewater to Southwest Plant hereunder.

The City will render billings to DELCORA on a quarterly basis. These billings may be based on actual or estimated quantities. If billings are based on estimates, they shall be adjusted to actual recorded quantities at least annually.

Billings will be payable within thirty days. If billings are unpaid thereafter interest thereon shall be added at the rate of one percent (1%) a month.

The City on request will furnish DELCORA on or before the month of the fiscal year preceding the first year's operation of the expanded Southwest

Plant an estimate approved by the City's Water Commissioner of the first annual charge to DELCORA. The City will in no way be obligated by this estimate. In subsequent years, the previous year's total bills may serve as the basis of the budget estimate.

#### 6.05 Payment Bond

DELCORA shall at the execution of the Agreement furnish the City its bond in a sum equal to one and one-half ( $1\frac{1}{2}$ ) times the estimated annual charge payable to DELCORA hereunder for receipt, treatment and disposal of wastewater delivered by DELCORA to the City. The bond shall be conditioned on the faithful compliance by DELCORA with the provisions of this Agreement and also contain a confession of judgment clause, and the said bond be executed by DELCORA. The term of the bond shall commence from the date hereof and continue for a term of thirty (30) years and thereafter for as long as this Agreement remains in effect. The City shall not proceed against DELCORA on the confession of judgment under said bond without giving thirty (30) days' written notice to DELCORA of its intention to do so.

#### 6.06 Maintenance of Records.

The records and accounts of the City shall be kept in a manner which will permit verification of the charges payable hereunder and will be accessible for the purposes of inspection by DELCORA or its representatives.

### ARTICLE 7 Future Service Requirements at the Southwest Plant

#### 7.01 Changing Future Service Requirements and Related Matters

The City and DELCORA shall from time to time review plant performance

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and the City's and DELCORA's current and future requirements, both in terms of additional future flows of wastewater and higher standards of wastewater treatment and disposal.

Governmental agencies regulating wastewater pollution control may also fix additional requirements on the Southwest Plant either in terms of providing for additional future flows or meeting higher standards of wastewater treatment and disposal.

#### 7.02 Future Expansion

To accommodate additional flows from its source areas other than DELCORA's at the Southwest Plant, the City may expand the Southwest Plant at no cost to DELCORA.

The City agrees to undertake any future expansion of the Southwest Plant needed:

- (1) to accommodate additional flows from the Eastern Delaware County Service Area and upon completion thereof to increase the limits set forth in Section 2.01 hereof; or

- (2) to meet higher levels of wastewater treatment and disposal;

Provided, that DELCORA agrees in writing to pay the total project costs of such expansion in its reserve capacity or such increase in the treatment and disposal of wastewater and deposits the estimated amount thereof prior to the commencement of construction for disbursement in the manner provided in Article 4 hereof, and

Provided, further, that DELCORA will pay its share of the operating costs of the expanded or improved Southwest Plant as provided in Article 6 hereof.



## ARTICLE 8

### Sewage Quality Restrictions

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#### 8.01 Uniform Standards

DELCORA shall adopt rules, regulations and resolutions governing sewer connections and the admission of wastewater into the sewers of DELCORA, which rules, regulations and resolutions shall bar from the sewers of DELCORA such substances as are barred by the City from its sewers according to the rules, regulations, resolutions, and ordinances of the City, existent or adopted in the future, copies of which will be delivered promptly to DELCORA by the City.

#### 8.02 Barring of Harmful Substances

No substances deleterious or detrimental to sewers or to the treatment of wastewater, including oils, greases, acids or wastes of the nature and quantity barred by the City from its sewers shall be discharged by DELCORA into the Southwest Plant.

Failure to comply with a notice in writing from the City's Water Commissioner to cease and discontinue the delivery of any such substance or substances, shall be sufficient cause for the suspension of this Agreement pending prompt remedy by DELCORA.

#### 8.03 Damages Due to Barred or Harmful Substances

Any additional costs or damages incurred by the City as a result of discharges barred above or due to improper maintenance of DELCORA's facilities will be billed to DELCORA and will be paid to the City by DELCORA within 30 days of such billing by the City.

ARTICLE 9

Miscellaneous

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9.01 Rebuilding Upon Casualty

Immediately upon the occurrence of any loss or damage to any part of the Southwest Plant and upon receipt by the City of monies from DELCORA sufficient to pay DELCORA's share of repair costs based on the respective reserved capacities, the City will commence and promptly complete, or cause to be so commenced and promptly completed the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by its engineers.

9.02 Inspection and Audit

Each party shall provide the other from time to time all information relevant to the proper administration or their responsibilities under this Agreement, or in respect to the interpretation hereof, as, and in such form and detail as may be reasonably requested, and each shall at all reasonable times and from time to time permit their representatives to examine and inspect their respective records and physical facilities and audit their respective accounts relevant to the subject matter of this Agreement.

9.03 Arbitration

In the event of any dispute between the parties such dispute may be referred by either party to an impartial arbitrator to be appointed by mutual agreement of the parties.

In the event that the parties are unable to agree upon such impartial arbitrator within fifteen (15) days, either party may make application to the



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Philadelphia Office of the American Arbitration Association for the sole purpose of selecting an arbitrator in accordance with the rules of that Association. If any party to the dispute shall be dissatisfied with the Award of the Arbitrator from the American Arbitration Association, such dissatisfied party shall have the right to resort to the Court of Common Pleas of Philadelphia in accordance with the provision of the Act of April 25, 1972, P. L. 381, as amended.

It is specifically understood and agreed that all of the provisions of the said Act of April 25, 1972, P. L. 381, as amended, shall apply and both parties hereto shall have all rights provided thereunder except only with respect to the selection of an impartial arbitrator from the American Arbitration Association if one cannot be agreed upon by the parties as aforesaid.

#### 9.04 Mutual Release

Each party hereto does hereby release the other from any and all claims for damages or suits therefor, by reason of the inability of the other, not due to gross negligence on its part, to carry out its obligations hereunder.

#### 9.05 Term

This agreement shall continue in force and effect for a full term of thirty (30) years, commencing on the date hereof and shall thereafter continue until terminated by either of the parties hereto. Either party may terminate this agreement by five (5) years' written notice of its intention to do so; which notice may be served at any time after the expiration of twenty-five (25) years from the date hereof.

#### 9.06 No Joint Ownership

No provision of the Agreement shall be construed to create any type of joint ownership of any property, any partnership or joint venture, or create

any other rights or liabilities except as expressly set forth herein.

#### 9.07 Severability

Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

#### 9.08 Headings

The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

#### 9.09 Successors and Assigns

All the covenants contained in this Agreement shall extend to and bind the respective successors and assigns of the parties hereto with the same effect as if the words "successors and assigns" had, in each case, been specifically mentioned.

#### 9.10 Waiver

The failure of a party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

#### 9.11 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

#### 9.12 Definitions

(a) "Eastern Delaware County Service Area" shall mean that portion

of said County within the boundaries shown on Exhibit A attached hereto, which may be expanded by DELCORA only with the approval of the City.

(b) "mgd" shall mean millions of gallons of wastewater in any given twenty-four (24) hour period.

(c) "Wastewater" shall mean the normal domestic wastewater from households, business and commercial establishments and from industries, and shall also include water borne wastes from manufacturing, processing, refining, packaging, cleaning or assembling all types of raw materials and industrial, consumer and agricultural products or from any other industrial utility or commercial operations which are permitted to be treated in the City Plant pursuant to applicable ordinances and regulations of the City in force from time to time.

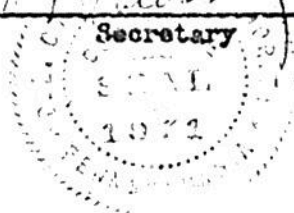
IN WITNESS WHEREOF, The City of Philadelphia has caused this Agreement to be executed by its Water Commissioner, and the Delaware County Regional Water Quality Control Authority, by its Chairman who have hereunto set their hands and seals, the day and year above written.

Attest

James F. Dillon

Attest

M. F. Blasing  
Secretary



CITY OF PHILADELPHIA

By:

James F. Lawrence  
Water Commissioner

DELAWARE COUNTY REGIONAL WATER  
QUALITY CONTROL AUTHORITY

By:

Joseph L. Saloner  
Vice Chairman

Approved as to form

MARTIN WEINBERG

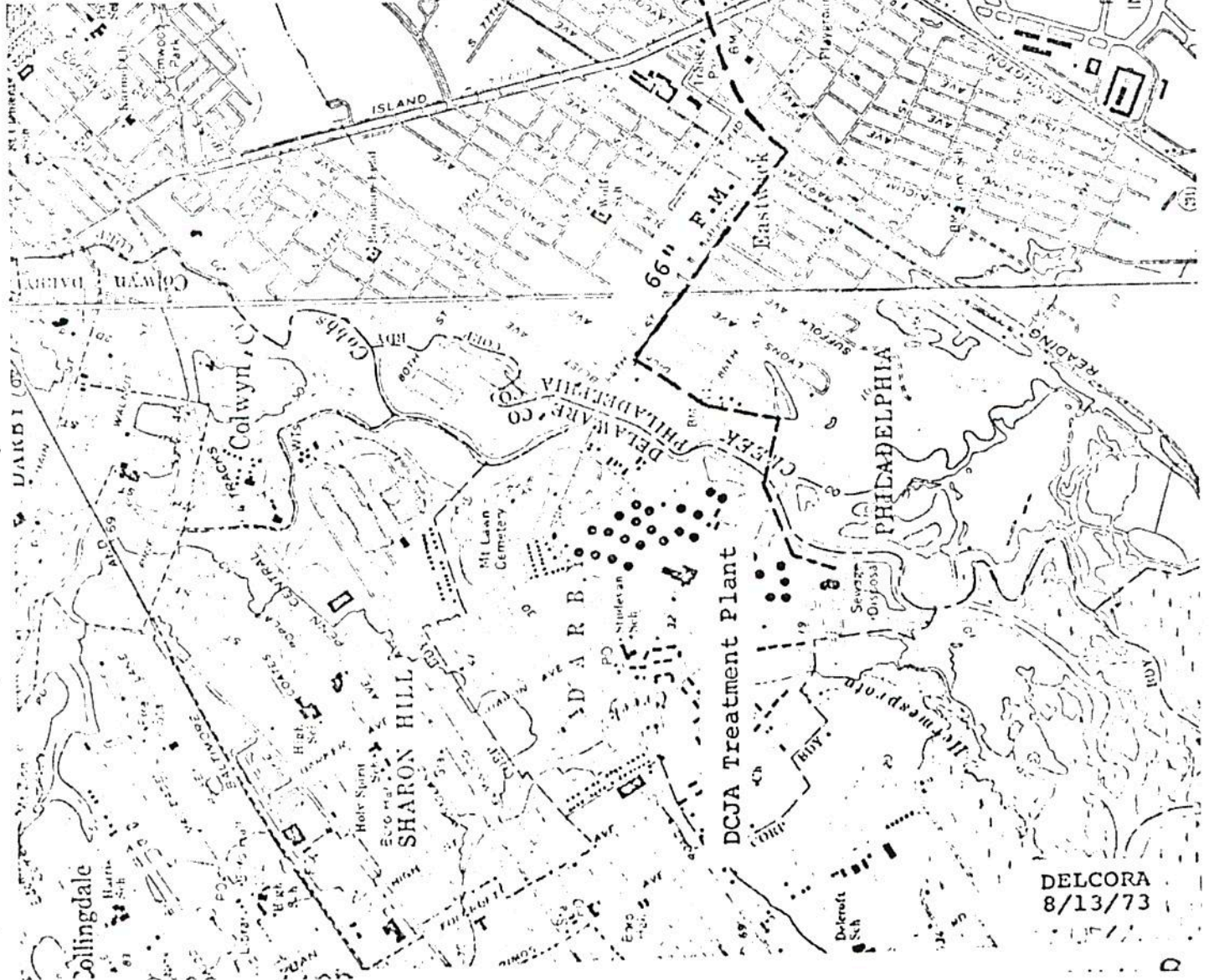
City Solicitor

Andrew Bauman  
Assistant City Solicitor



EASTERN DELAWARE COUNTY


BYPASS SYSTEM



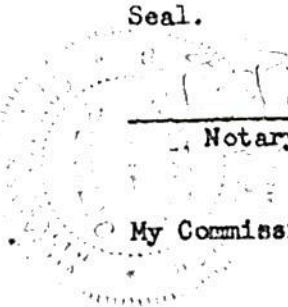
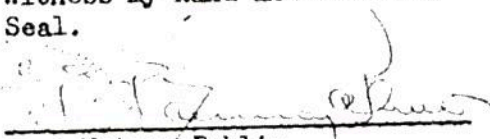
COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
CITY AND COUNTY OF PHILADELPHIA )

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BE IT REMEMBERED, that on this 15<sup>TH</sup> day of March ,  
A. D. 1974 , before me, the subscriber, a Notary Public in and for the  
Commonwealth of Pennsylvania, residing in The City of Philadelphia,  
personally appeared Carmen F. Guarino, personally known to me and to me  
known to be the Water Commissioner of The City of Philadelphia, who,  
being duly sworn according to law, deposes and says that he resides in  
The City of Philadelphia and is the Water Commissioner of the said City;  
that the said Agreement was duly executed and delivered by him as and  
for the act and deed of The City of Philadelphia under authority of an  
Ordinance of City Council approved by the Mayor July 20, 1973  
for the uses and purposes therein set forth.

  
Water Commissioner

Sworn to and subscribed before  
me the day and year aforesaid.  
Witness my hand and Notarial  
Seal.

  
  
Notary Public

Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires February 21, 1977

My Commission Expires \_\_\_\_\_.

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COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF DELAWARE ) ss.

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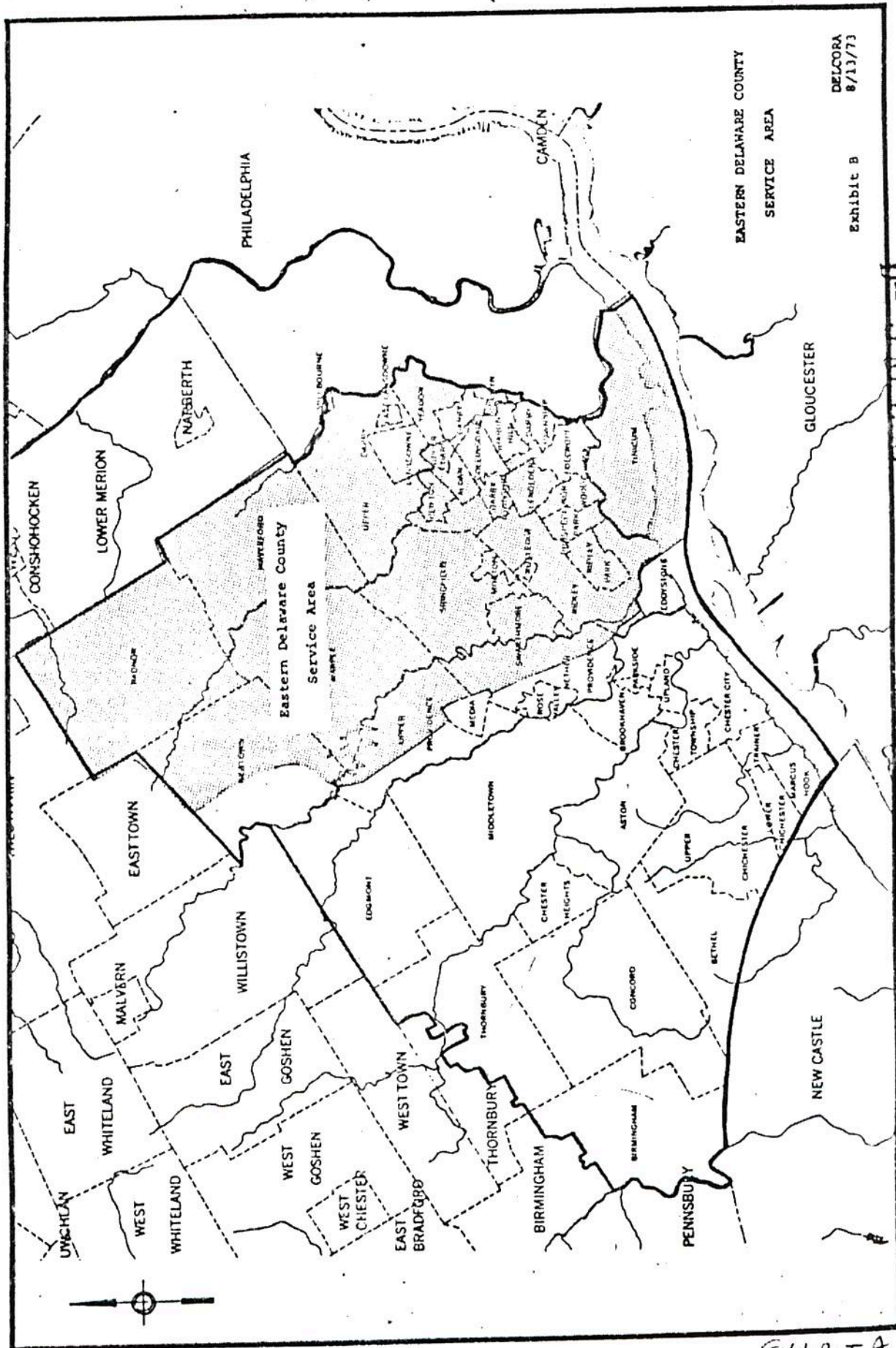
On this 15th day of March , A. D. 1974 , before me, the subscriber, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Delaware, personally appeared George F. Blessing Secretary of the said Delaware County Regional Water Quality Control Authority, who, being duly sworn according to law, says that he was present at the execution of the foregoing agreement and saw the common or corporate seal duly affixed thereto; that the seal so affixed is the common or corporate seal; that the above agreement was duly sealed and delivered by Joseph L. Salvucci , Chairman of the said Authority, as and for the act and deed of the said Authority, for the uses and purposes therein mentioned, and that the name of this deponent as Secretary and of Joseph L. Salvucci , as Chairman of the said Authority, subscribed to the above agreement in attestation of its due execution and delivery, are in their and each of their respective handwritings.

George F. Blessing  
Secretary, Delaware County  
Regional Water Quality Control  
Authority.

Sworn and subscribed before me  
the day and year aforesaid.  
Witness my hand and Notarial Seal.

James M. Barber  
Notary Public, Delaware County, Delaware Co.  
My Commission Expires August 26, 1974





EASTERN DELAWARE COUNTY  
SERVICE AREA

DELCORA  
8/13/73

Exhibit B

155-985-0